

## Department of Veterans Affairs

## §21.3041

(a) Who is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service); or

(b) For a unit course or courses which are being paid for under 5 U.S.C. chapter 41.

(Authority: 38 U.S.C. 3681(a))

[61 FR 26108, May 24, 1996]

### CLAIMS

#### §21.3030 Claims.

The provisions of subpart B of this part apply with respect to submission of a claim for educational assistance under 38 U.S.C. chapter 35, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3513, 5101, 5102, 5103)

[64 FR 23772, May 4, 1999]

### ELIGIBILITY AND ENTITLEMENT

#### §21.3040 Eligibility; child.

(a) *Commencement.* A program of education or special restorative training may not be afforded prior to the eligible person's 18th birthday or the completion of secondary schooling, whichever is earlier, unless it is determined through counseling that the best interests of the eligible person will be served by entering training at an earlier date and the eligible person has passed:

(1) Compulsory school attendance age under State law; or

(2) His or her 14th birthday and due to physical or mental handicap may benefit by special restorative or specialized vocational training.

(b) *Secondary schooling.* Completion of secondary schooling means completion of a curriculum offered by a public or private school which satisfies the requirements for a high school diploma or its equivalent—usually completion of the 12th grade in the public school system.

(c) *Age limitation for commencement.* No person is eligible for educational assistance who reached his or her 26th birthday on or before the effective date of a finding of permanent total service-connected disability, or on or before

the date the veteran's death occurred, or on or before the 91st day of listing by the Secretary concerned of the member of the Armed Forces on whose service eligibility is claimed as being in one of the missing status categories of §21.3021 (a)(1)(iv) and (3)(ii).

(d) *Termination of eligibility.* No person is eligible for educational assistance beyond his or her 31st birthday, except as provided under §21.3041(e)(2). In no event may educational assistance be provided after the period of entitlement has been exhausted. In an exceptional case special restorative training may be provided in excess of 45 months. See §21.3300.

(Authority: 38 U.S.C. 3512(a))

[30 FR 15632, Dec. 18, 1965, as amended at 34 FR 842, Jan. 18, 1969; 39 FR 38227, Oct. 30, 1974; 40 FR 42879, Sept. 17, 1975; 41 FR 47929, Nov. 1, 1976; 43 FR 35290, Aug. 9, 1978]

#### §21.3041 Periods of eligibility; child.

(a) *Basic beginning date.* The basic beginning date of an eligible child's period of eligibility is his or her 18th birthday or successful completion of secondary schooling, whichever occurs first. See paragraph (b) of this section and §21.3040 (a) and (b).

(Authority: 38 U.S.C. 3512(a))

(b) *Exceptions to basic beginning date.* (1) An eligible child may have a beginning date earlier than the basic beginning date when he or she has:

(i) Completed compulsory school attendance under applicable State law, or

(ii) Passed his or her 14th birthday and has a physical or mental handicap. See §21.3040(a).

(2) The eligible child may have a beginning date later than the basic beginning date when any of the following circumstances exist.

(i) If the effective date of the permanent and total disability rating is before the child has reached 18 but the date of notification to the veteran from whom the child derives eligibility occurs after the child has reached 18, the beginning date of eligibility shall be the basic beginning date as determined in paragraph (a) of this section, or the date of notification to the veteran, whichever is more advantageous to the eligible child.

(ii) If the effective date of the permanent and total disability rating occurs after the child has reached 18 but before he or she has reached 26, the beginning date of eligibility will be the effective date of the rating or the date of notification to the veteran from whom the child derives eligibility, whichever is more advantageous to the eligible child.

(Authority: 38 U.S.C. 3512(a)(3), 3512(d))

(iii) If the child becomes eligible through the death of a veteran, the date of death will be the beginning date of eligibility if it occurs after the child's 18th birthday and before his or her 26th birthday.

(iv) The child may become eligible through qualifying as the veteran's adopted child (see § 3.57(c)) or by becoming a stepchild of the veteran and a member of the veteran's household. If either of these events occurs after the child's 18th birthday and before his or her 26th birthday, the effective date of eligibility will be whichever of the following is appropriate:

(A) The date the child qualifies as an adopted child under § 3.57(c), or

(B) The date the child becomes the veteran's stepchild and a member of his or her household.

(Authority: 38 U.S.C. 3501)

(c) *Basic ending date.* The eligible person's 26th birthday.

(d) *Modified ending date.* When one of the following occurs between ages 18 and 26, the ending date will be the eligible person's 26th birthday or 8 years from the date of happening specified in paragraphs (d) (1) to (7) of this section and 10 years in paragraph (d)(8); whichever is later. When paragraph (d)(9) is applicable, the ending date will be as stated in paragraph (d)(9). Where the ending date is subject to modification under more than one of paragraph (d) (3), (4), (5), (6) or (7) of this section, the more favorable date will apply. In no case will the modified ending date extend beyond the eligible person's 31st birthday.

(Authority: 38 U.S.C. 3512).

(1) Effective date of permanent total rating of veteran-parent or the date of

notification to him or her of such rating, whichever is the more advantageous to the eligible person.

(Authority: 38 U.S.C. 3512)

(2) Death of veteran-parent.

(3) Date of first unconditional discharge or release from "duty with the Armed Forces" served as an eligible person if he or she served after age 18 and before age 26. See § 21.3042.

(4) Enactment of Pub. L. 88-361 on July 7, 1964, providing eligibility based on permanent total disability; that is, July 6, 1969.

(5) Enactment of Pub. L. 89-349 on November 8, 1965, providing eligibility based on peacetime service after the Spanish-American War and prior to September 16, 1940; or during World War I or World War II solely by reason of the provisions of 38 U.S.C. 1101; that is, November 7, 1970.

(6) Enactment of Pub. L. 89-613 on September 30, 1966, providing eligibility based on service with the Philippine Commonwealth Army or as a Philippine Scout as defined in § 3.40 (b), (c), or (d) of this chapter; that is, September 29, 1971. See § 3.807 of this chapter.

(7) Effective date of Pub. L. 90-77, section 307, October 1, 1967, providing eligibility for persons solely by virtue of that section who were over age 23 and below age 26 on that date; that is September 30, 1972.

(8) Enactment of Pub. L. 92-540 (86 Stat. 1074) on October 24, 1972, providing for a course of apprentice or other on-the-job training approved under the provisions of § 21.4261 or 21.4262; that is, October 24, 1982 or until age 31, whichever is earlier.

(9) The child may lose eligibility through ceasing to be the veteran's stepchild either because the veteran and the child's natural or adoptive parent divorce or because the veteran and the child's natural or adoptive parent separate and the child is no longer a member of the veteran's household. If this occurs, the ending date of the child's period of eligibility will be determined as follows:

(i) If the child ceases to be the veteran's stepchild while the child is not in training, the ending date of the child's eligibility shall be the date on

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which the child ceases to be the veteran's stepchild.

(ii) If the child ceases to be the veteran's stepchild while the child is in training in a school organized on a term, semester or quarter basis, the ending date of the child's eligibility will be the last date of the term, semester or quarter during which the child ceases to be the veteran's stepchild.

(iii) If the child ceases to be the veteran's stepchild while the child is in training in a school not organized on a term, semester or quarter basis, the ending date of the child's period of eligibility will be the end of the course or 12 weeks from the date on which the child ceases to be the veteran's stepchild, whichever is earlier. See § 21.3135(g).

(Authority: 38 U.S.C. 101(4)(a), 3501).

(e) *Extensions to ending dates.* (1) Suspension of program due to conditions determined by the Department of Veterans Affairs to have been beyond the person's control (see § 21.3043): extended for length of period of suspension, but not beyond age 31. See § 21.3040(d).

(2) Period of eligibility as specified in paragraph (c) or (d) of this section ends while enrolled in an educational institution regularly operated on the quarter or semester system and such period ends during a quarter or semester, such period shall be extended to the end of the quarter or semester, or for courses at educational institutions operated on other than a quarter or semester system, if the period ends after a major portion of the course is completed, such period shall be extended to the end of the course, or until 12 weeks have expired, whichever first occurs. Extension may be authorized beyond age 31, but may not exceed maximum entitlement. See § 21.3044(a). No extension of the period of eligibility will be made where training is pursued in a training establishment as defined in § 21.4200(c).

(Authority: 38 U.S.C. 3512(a)(5))

(3) Child is enrolled and eligibility ceases because veteran is no longer rated permanently and totally disabled: extended to date specified in paragraph (e)(2) of this section without

regard to whether the midpoint of the quarter, semester or term has been reached. See § 21.3135(h).

(4) Child is enrolled and eligibility ceases because the member of the Armed Forces upon whose service eligibility is based is no longer listed by the Secretary concerned in any of the categories specified in § 21.3021(a)(1)(iv): extended to date specified in paragraph (e)(2) of this section without regard to whether the midpoint of the quarter, semester or term has been reached. See § 21.3135(i).

[30 FR 15632, Dec. 18, 1965, as amended at 31 FR 6773, May 6, 1966; 31 FR 13993, Nov. 2, 1966; 32 FR 13402, Sept. 23, 1967; 34 FR 842, Jan. 18, 1969; 39 FR 38228, Oct. 30, 1974; 40 FR 42879, Sept. 17, 1975; 41 FR 47929, Nov. 1, 1976; 43 FR 35290, Aug. 9, 1978; 48 FR 57275, Dec. 29, 1983; 54 FR 31952, Aug. 3, 1989; 54 FR 42501, Oct. 17, 1989; 61 FR 26108, May 24, 1996; 62 FR 55760, Oct. 28, 1997]

### § 21.3042 Service with Armed Forces.

(a) No educational assistance under 38 U.S.C. chapter 35 may be provided an otherwise eligible person during any period he or she is on duty with the Armed Forces. See § 21.3021 (e) and (f). This does not apply to brief periods of active duty for training. See § 21.3135(f).

(Authority: 38 U.S.C. 3501(d))

(b) If the eligible person served with the Armed Forces, his or her discharge or release from each period of service must have been under conditions other than dishonorable.

(Authority: 38 U.S.C. 3501(d))

(c) The term *unconditional discharge*, as used in § 21.3041 means unconditional discharge or release from duty with the Armed Forces. See § 3.13 of this chapter.

[30 FR 15633, Dec. 18, 1965, as amended at 34 FR 842, Jan. 18, 1969; 36 FR 2508, Feb. 5, 1971; 41 FR 42929, Nov. 1, 1976; 61 FR 26109, May 24, 1996]

### § 21.3043 Suspension of program; child.

For an eligible person who suspends his program due to conditions determined by the Department of Veterans Affairs to have been beyond his or her control the period of eligibility may, upon his request, be extended by the